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OLC #78-249/1

OGC 78-8029
4 December 1978

MEMORANDUM FOR: Director of Central Intelligence
VIA : Deputy Director of Central Intelligence
FROM : Anthony A. Lapham
General Counsel
SUBJECT : Release of Documents of Congressional
Interest

1. Action Requested: For information only in connection with the memorandum on this subject proposed for your signature by OLC.

2. Background: The right to withhold "Congressional documents," and exactly what documents qualify as "Congressional documents" are matters of some uncertainty. A congressional committee's decision not to approve the release of documents in the custody of the Agency may not be dispositive as far as the courts are concerned in FOIA and Privacy Act cases.

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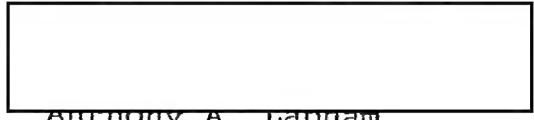
3. There is at least one recent FOIA decision [redacted] which holds that documents originating with the Congress may not be subject to access under the FOIA, provided certain conditions exist, including a clear indication of congressional intent that the documents were not to be publicly released and that control of the documents remains with the Congress, even though they may be in the custody of the Agency.

4. Insofar as documents prepared by the Agency in response to the expressed interests of the Congress are concerned, there is still greater uncertainty. The Agency is currently engaged in FOIA litigation [redacted] which involves both documents originated by congressional committees and Agency documents prepared in response to congressional queries. The results of this lawsuit should provide further guidance as to the weight the courts will give to determinations by a congressional committee regarding the availability to the public, in FOIA contexts, of documents exchanged between the Agency and congressional committees.

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5. At the very least, you should be aware that there is no clear statutory basis for exempting all such correspondence from disclosure.

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 Anthony A. Lappan

cc: OLC

OGC/JDL/mp

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